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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 PATRICIA LOMBARDO,

8 Plaintiff(s),

9 v.

10 PROPERTY AND CASUALTY INSURANCE  
11 COMPANY OF HARTFORD, et al.,

12 Defendant(s).

Case No. 2:17-CV-2242 JCM (PAL)

ORDER

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14 Presently before the court is the matter of *Lombardo v. Property and Casualty Insurance*  
15 *Company of Hartford et al*, case number 2:17-cv-02242-JCM-PAL.

16 **I. Background**

17 Plaintiff purchased a homeowner's insurance policy in late 2012 from defendant Property  
18 and Casualty Insurance Company of Hartford ("Hartford") on her residence at 1725 Bannie Ave.,  
19 Las Vegas, NV 89102 ("the residence"). (ECF No. 1-1 at 42). Around October 28, 2013, a  
20 windstorm caused trees to fall onto plaintiff's residence. *Id.* Sometime thereafter, plaintiff's house  
21 became not fit to live in, and Hartford, through its agent ALE Solutions ("ALE"), coordinated  
22 temporary housing for plaintiff. *Id.* at 43.

23 Around December 17, 2014, plaintiff leased the premises located at 3100 Plaza De Rosa,  
24 Las Vegas, Nevada ("the premises") from Brown Blankfield Group ("landlord"). *Id.* Plaintiff  
25 claims that the premises were selected in part due to plaintiff's unique situation (plaintiff is 84  
26 years old, legally blind, and provides full-time care for her 63-year old daughter with special  
27 needs). Hartford paid rent on the premises up until June 30, 2017. *Id.* at 44. The payments were  
28 made under the "Loss of Use" provision of plaintiff's contract with Hartford, which has a \$79,400

1 cap. *Id.* at 66 (providing a copy of the continuation page of the homeowner’s policy that details  
2 limits on liability); *id.* at 90 (providing a copy of the insurance contract and the “Loss of Use”  
3 provision).

4 Prior to ceasing rent payments, Hartford, through ALE, informed the landlord of its intent  
5 to cease payments. *Id.* The landlord initiated eviction proceedings against plaintiff, and a hearing  
6 was held on July 27, 2017. *Id.* The parties have not advised the court on the status of eviction  
7 proceedings.

8 On August 2, 2017, plaintiff filed a complaint in state court against Hartford, ALE, and  
9 unnamed defendants. *Id.* at 27. Plaintiff asserts six causes of action: (1) breach of contract against  
10 Hartford and ALE; (2) breach of implied covenant of good faith and fair dealing against Hartford  
11 and ALE; (3) breach of fiduciary duty against Hartford and ALE; (4) intentional infliction of  
12 emotional distress against Hartford and ALE; (5) insurance bad faith against Hartford; and (6) a  
13 request for injunctive relief against Hartford and ALE. *Id.* at 17-26.

14 On August 24, 2017, Hartford filed a petition for removal. (ECF No. 1). In its notice,  
15 Hartford does not discuss any motions pending in state court at the time of removal. *Id.* However,  
16 Exhibit 1, the state court file, includes plaintiff Patricia Lombardo’s motion for preliminary  
17 injunction. (ECF No. 1-1 at 31–55). The motion was docketed in state court on August 3, 2017.  
18 (ECF No. 1-1 at 31). On August 9, 2017, Hartford received service of process of the complaint  
19 and preliminary injunction. (ECF No. 1-1 at 2). Neither defendant has responded to the motion.

## 20 **II. Legal Standard**

21 “An injunction is a matter of equitable discretion . . . an extraordinary remedy that may  
22 only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Winter v.*  
23 *N.R.D.C.*, 555 U.S. 7, 20, 129 S.Ct. 365,374 (2008). Courts must consider the following elements  
24 in determining whether to issue a temporary restraining order and preliminary injunction: (1) a  
25 likelihood of success on the merits; (2) likelihood of irreparable injury if preliminary relief is not  
26 granted; (3) balance of hardships; and (4) advancement of the public interest. *Id.* at 20. The test  
27 is conjunctive, meaning the party seeking the injunction must satisfy each element.

1 Before a preliminary injunction may issue, the plaintiff must show that it will suffer an  
2 irreparable injury and otherwise lacks an adequate remedy at law to prevent such injury.  
3 “Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy.”  
4 *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

### 5 **III. Discussion**

6 Plaintiff requests a temporary restraining order and preliminary injunction that would  
7 compel Hartford to pay her rent for substitute housing under the “Loss of Use” provision of her  
8 insurance contract. (ECF No. 1-1 at 47–49). Plaintiff asserts that, because Hartford has not  
9 fulfilled its contractual requirement to repair her house, Hartford must continue to pay her rent for  
10 temporary housing notwithstanding the policy’s \$79,400 cap on loss of use payments. Plaintiff  
11 requests that the court compel defendant to make rent payments immediately. Although not  
12 directly stated in the motion, the strong inference is that plaintiff cannot otherwise make rent  
13 payments during the pendency of her case. As plaintiff is 84 years old, legally blind, and cares for  
14 her 63-year old special-needs daughter, plaintiff asserts that she would be irreparably harmed if  
15 this court does not enter a preliminary injunction.

16 Courts sitting in equity generally do not issue preliminary injunctions to compel payments  
17 under a contract during the pendency of a case. The Supreme Court considered the issue in *Great-*  
18 *West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002), stating:

19 “[A]n injunction to compel the payment of money past due under a contract, or  
20 specific performance of a past due monetary obligation, was not typically available  
21 in equity. Those rare cases in which a court of equity would decree specific  
22 performance of a contract to transfer funds were suits that, unlike the present case,  
23 sought to prevent future losses that were either incalculable or would be greater  
24 than the sum awarded.”

25 *Id.* at 210–11 (citations and footnote omitted).

26 Here, the plaintiff has not demonstrated irreparable harm. Plaintiff claims breach of  
27 contract against defendants Hartford and ALE and requests the court require defendants’ continued  
28 performance under the contract notwithstanding the policy’s \$79,400 cap on loss of use payments.  
Plaintiff details in her motion the hardship that herself and her daughter would incur upon eviction  
from their temporary housing arrangement. However, plaintiff does not demonstrate that any harm  
occasioned upon such occurrence is incapable of being reduced to money damages or would be

1 less than the sum awarded on final judgment. *See Knudson*, 534 U.S. at 210–11. Therefore,  
2 plaintiff is not entitled to injunctive relief. *See id.*; *Brewer*, 757 F.3d at 1068.

3 **IV. Conclusion**

4 In the present case, plaintiff’s motion does not clearly demonstrate that plaintiff is entitled  
5 to the extraordinary remedy of injunctive relief. *See Winter*, 555 U.S. at 22. Thus, at this time,  
6 the court will not compel Hartford to continue payments under plaintiff’s insurance contract.

7 Accordingly,

8 IT IS HEREBY ORDERED that plaintiff’s motion for preliminary injunction (ECF No. 1-  
9 1 at 31–55) be, and the same hereby is, DENIED.

10 DATED August 28, 2017.

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UNITED STATES DISTRICT JUDGE